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HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

Writ Petition No.1963 of 2003

PETITIONER: Ram Prasad, S/o Chotai ,
Aged about 33 years,
Casual Labour, R/o village
Kot Darri, Tehsil: Baikunthpur
Distt. Koriya (C.G.).

- Versus -

RESPONDENTS:

1. The S.D.O.,
Public Health Engineering,
Baikunthpur,
District: Koriya.

2. Shri P.S. Rao,
Executive Engineer, Public Health Engineering, Division - Baikunthpur, District: Koriya.

3. The Chief Engineer,
Public Health Engineering Department, Raipur (C.G.).

4. Engineering-in-Chief
Public Health Engineering
Department, Raipur (C.G.).

5. The Collector,
District: Koriya (C.G.).

POST FOR ORDER ON 19TH SEPTEMBER 2003

Sd/-
L.C.BHADOO
Judge

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District: Koriya (C.G.).

Present: -

Mr. A.K. Gupta, Advocate: For the petitioner

Mr. P.S. Koshy, Govt. Advocate : For the State/respondents.

Before: Hon'ble Shri Justice L.C. Bhadoo

ORDER

(Passed on 19th September, 2003)

1. The petitioner has preferred this petition under Articles 226/227 of the Constitution of India and challenged the action of the respondents by which they have refused to pay the salary for the month of February 2002 and also for not regularizing his services.

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2. Facts leading to filing of this writ petition are that the petitioner joined in the Public Health Department on 1st September 1988 as a casual labourer and his name appears in the list prepared by the Department of Casual Labourer, Annexure-P/1.

3. The petitioner's case is that the Government issued a circular for regularizing the services of those casual labourers who were working since 1988. The petitioner was regularly working as a casual labourer, but all of a sudden he fell ill on account of peptic ulcer in the stomach. As he was not able to perform his duties on account of illness, so he remained absent from the duty from 1st October 2000 for getting treatment and ultimately on 9th November 2001 the petitioner reported for the duty after obtaining the medical certificate and requested to allow him to take on duty. On 9th November 2001, the petitioner started performing his duties regularly. His salary for the month of December 2001 and January 2002 was paid, but the salary for the month of November 2001 was not paid and even the salary for the month of February 2002 has not been paid even though he was regularly performing his duties. His joining report is Annexure-P/2. Medical Certificate is Annexure-P/3. The application submitted by the petitioner on 1st March 2002 is Annexure-P/4.

4. The Assistant Engineer also recommended his case for payment of salary vide Annexure-P/5. Ultimately, when the salary was not paid the petitioner served a notice to the respondents. It is, therefore, requested that an appropriate writ or direction be issued for regularization/payment of salary to the petitioner for the month of February 2002.

5. Return has been filed on behalf of respondents 1, 3,4 and 5 in which counsel for the respondents submitted that the petitioner was purely a casual labourer and he absented himself from the duties w.e.f. 30-9-2000 and he continuously remained absent and there is no question of reinstatement and regularization of the petitioner. It is totally false that the petitioner is working since November 2001. Since the

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disputed facts are involved in the petition, the petitioner can approach the Labour Court for redressal of his grievances.

6. It is admitted that the petitioner had worked as casual labourer w.e.f. 1-9-88 to 30-9-2000, thereafter he remained absent from the duty. The medical certificate submitted by the petitioner is not from a competent medical doctor. The name of the petitioner has been wrongly shown in the payment sheet that he worked for the month of November, December 2001 and January 2002. When respondent No.2 objected on the preparation of the wages for the petitioner for the month of November 2001, the Assistant Engineer namely, Shri S.K. Verma himself corrected the wages sheet and prepared the bills and made the wages. From this alone, it is evidently clear that the petitioner had, in fact, not worked in November 2001. Even though the petitioner had not worked for a single day in the month of December 2001 and January 2002. The petitioner in connivance with Assistant Engineer Shri S.K. Verma somehow managed to get the wage sheet prepared for the month of December 2001 and January 2002 and due to over sight the said payment sheet was granted approval and the payments have been shown to be made to the petitioner for the months of December 2001 and January 2002. Similarly for the month of February 2002 also when the petitioner somehow managed to get the wage sheet prepared, it was objected by respondent No.2 and the bills were sanctioned after making necessary corrections inasmuch as disallowing the claim of wages by the petitioner for the month of February 2002. Since the petitioner remained absent from the duty from 1st October 2000, being a casual labourer, his services automatically came to an end. The disciplinary action has been recommended against Shri S.K. Verma, Assistant Engineer.

7. Rejoinder has been filed on behalf of the petitioner wherein it has been mentioned that it is wrong to say that the petitioner remained absent continuously and thereby his services have automatically came to an end, as the petitioner was sick and he informed the respondents that he was unable to perform his

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duties on account of sickness and when he became perfect, he made a report along with the medical certificate. He was allowed to join duty on 9th November 2001 and accordingly, his salary was paid for the month of December 2001, thereafter in the month of January 2002 he was pressurized by Junior Engineer Shri V.K. Mishra, who happens to be mediator for Shri P.S. Rao, demanded Rs. 5,000/-, when the petitioner expressed his inability, the problem has been created. The petitioner has annexed the documents Annexure-P/1 & P/2. A perusal of the said documents reveals that the petitioner had went to his work place up to 20-8-2002, however respondent No.1 was transferred from Baikunthpur and still the petitioner is going to his work place but he is not allowing the petitioner to perform his duties due to instructions of Shri P.S. Rao.

8. Respondent No.2 is regularly misusing his powers. For example one Mr. R.K. Kurmi worked only for 15 days in the month of March 2003 and when the actual attendance sheet went to respondent No.2, he cancelled the wages sheet, Annexure-P-4(c) and prepared a fresh wages sheet, wherein he has enhanced the attendance for 10 days and prepared the bill on his own account. There are regular complaints against respondent No.2 and one Mr. V.K. Mishra. In the newspaper also their illegal actions have been published.

9. I have heard the learned counsel for the parties and perused the records.

10. A perusal of the Annexure-P/5, letter written by Assistant Engineer shows that the petitioner reported along with medical certificate on 9-11-2001 and he was allowed to take on duty. In this letter he has also mentioned that on account of some altercation between Junior Engineer Mr. V.K. Mishra and the petitioner, the salary bill of the petitioner was disallowed after cutting in the wages sheet by Mr. V.K. Mishra. When a show cause notice was issued to the Assistant Engineer, he replied vide Annexure-P/3 which shows that the petitioner had joined his duties on 9-11-2001 and he also mentioned that after 3 months it has been said that why the salary has been paid to the petitioner and it has been further mentioned that

in the matter of Ram Prasad the action is not justified. Annexure-P/5 along with the salary statement for the month of November itself shows that the pay bill of petitioner was prepared which was ultimately disallowed on the order of Respondent No.2. In the circumstances, the petition of the petitioner up to the extent of payment of salary for the month of February 2002 deserves to be allowed.

11. As far as the question of regularization of the petitioner and for allowing him to continue his work is concerned, for that purpose the disputed facts are there and the petitioner is at liberty to move before the appropriate court for redressal of his grievances.

12. In the result, the petition of the petitioner is partly allowed and the respondents are directed to make the payment for the month of February 2002 to the petitioner. Rest of the petition is disallowed as mentioned above.

Sd/-
L.C.BHADOO
Judge

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